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## OUTSIDE SALESMEN AND THE WORKMEN'S COMPENSATION ACT\*

By LEO M. ALPERT\*\*

Recently, the Court of Appeals had before it a novel case.<sup>1</sup> The decision, however, in dismissing the appeal on a technical point, did not expose the meat of the controversy. Meat and marrow there is in plenty; to go behind the dryly bare opinion is the purpose of this venture. For doing that, apologetics may be in order.

The lawyer who discusses his case in the forum of public opinion—in this instance the legal periodicals—after losing it in the forum of last resort is properly suspect. Even Mr. Justice Frankfurter, when teaching at Harvard, was dubbed the Court of Last Resort of the United States Supreme Court because of his ultimate judgments, pronounced in classroom and law review, upon the decisions of those whom he was eventually to join. Mr. Justice Holmes is said never to have read law review notes or comments because the “arrogance” of the writers irked him. How much more difficult it becomes for the lawyer in the case to explicate it without running afoul of arrogance or axe-grinding.

Yet the case at hand involves too important a point under the Maryland Workmen's Compensation Act and too novel a query under the Federal Constitution for it to go unnoticed. At the same time, it may be—it is hoped—that this sort of venture will encourage other lawyers to discuss their cases (with obvious benefit to their brothers) in spite of inability in time and inclination to provide the scholarly view now accepted as standard by the law reviews; which have thus made it indecent for a lawyer to appear in public without his footnotes.

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<sup>1</sup> Consolidated Home Equipment Corporation v. State Accident Fund and Maryland Casualty Company, 13 A. (2d) 340 (Md. 1940).

The pertinent facts of this case are that a New York corporation was doing business in Maryland, Delaware, and surrounding states. In Baltimore was the Branch Office for the region. The corporation sold home equipment and various household appliances through outside salesmen, canvassers. For the more efficient conduct of business in Delaware, the lower section of New Jersey, the eastern section of Pennsylvania, and the upper sections of Maryland, a sub-office was opened in Wilmington, Delaware; that office being simply a stockroom and place of convenience for the salesmen to get together and receive instructions and merchandise from the manager who was under the direction and control of the Baltimore Branch Office, which kept the books, issued instructions on how the business was to be done, prepared payrolls, etc. A citizen and resident of Delaware was engaged, under a contract made in Delaware, to solicit orders as an outside salesman in a territory comprising Delaware, parts of Pennsylvania, parts of New Jersey, and the Maryland region as far south as Havre de Grace. The salesman had been working his territory for some two years, regularly and frequently spending a part of his time in Maryland (estimated as one-fourth of his total hours), when he was injured in Maryland by an accident arising out of and in the course of his employment. The Delaware Workmen's Compensation Act specifically excluded application of the Act to injuries occurring outside the state.<sup>2</sup> The employer carried insurance in the State Accident Fund of Maryland covering its liability under the Maryland Law. No premiums had ever been paid the State Accident Fund for this particular salesman—he had been mistakenly considered covered under the Delaware Law by the employer—but the policy issued by the State Accident Fund provided, in accordance with law, that if any employee, whose remuneration had been omitted from the payroll upon which the premiums were based, was found subject to the Maryland Act, then the payment of compensation was nonetheless assured de-

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<sup>2</sup> Del. Rev. Code (1935), Ch. 175, Sec. 6071.

spite the omission, and the employer was to be liable to the Fund for additional premiums for the omitted employee.<sup>3</sup>

Quite apparently, if the Maryland Compensation Act does not cover this injured employee, he falls straight through an interstice in the supposedly seamless web of the law. Equally important, so does his employer.

The Maryland Act covers:

"All salesmen including sales managers employed to solicit orders from customers outside of the establishment for which they are employed, who are citizens or residents of this State, employed by a person, firm or corporation having a place of business within this State, whether the injury for which compensation is asked was sustained within this State or elsewhere. . . ."<sup>4</sup>

The serious question under the Compensation Law is whether an outside salesman, *injured in Maryland*, who is otherwise covered under the Law (because working regularly and frequently in Maryland, for a Maryland employer, in an extra-hazardous employment, injured by an accident arising out of and in the course of his employment) is deprived of such protection because he is not a citizen or resident of Maryland.<sup>5</sup> In language, the statute seems to say so.

Said Judge McLanahan in his memorandum opinion in the Baltimore City Court:

"Prior to 1924, 'outside salesmen' performing duties such as the Claimant here performed, were not covered in any case whatsoever by the Maryland Workmen's Compensation Act. By the Act of 1924, Chapter 583, the sub-section which appears as Sub-section 43 of Section 32 of Article 101 of the Code, was added to the law. The court is of the opinion, from the clear lan-

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<sup>3</sup> The facts of the case are taken from the Record, pp. 6-9.

<sup>4</sup> Md. Code (1939), Art. 101, Sec. 33, Subsec. 43.

<sup>5</sup> The Court of Appeals agreed that this was the question. The opening sentence of the opinion is: "At a first hearing of this case argument was addressed to a question whether workmen's compensation insurance held by the appellant under the Maryland State Accident Fund covered payment of compensation to one of its non-resident salesmen injured by an accident within the State." Perhaps, put more broadly, the question might be phrased whether this type of employment is such as interests Maryland. But, on reflection, the broad question liquesces into the narrow one; for what is the "interest" of Maryland and how is it to be ascertained?

guage used in this section, that it was the intention of the Legislature to extend the coverage of the Maryland Compensation Law, insofar as 'outside salesmen' are concerned, merely to citizens or residents of this State. The Court of Appeals, in the case of Liggett & Meyers Tobacco Company vs. Goslin, 163 Md. 74, has upheld the constitutionality of this provision."<sup>6</sup>

Against that construction stand these considerations.

First, and fundamentally, every employee injured in Maryland, *who otherwise comes within the Workmen's Compensation Act*, is covered by the Act regardless of his citizenship, residence, or place where the contract of employment was made. It is apparent, by way of example, that a steelworker, who lives in Washington, D. C., where he was hired, and who commutes to Baltimore every day where he is regularly employed, injured in Baltimore, by an accident arising out of and in the course of his employment, cannot be denied compensation because he is not a citizen or resident of Maryland, or because his contract of employment was not made in Maryland. This is a rather basic conception in our Compensation Act and cannot seriously be disputed.<sup>7</sup>

Second, since our Act is meant to afford compensation to every employee (regardless of citizenship, residence, or

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<sup>6</sup> Record, p. 12. Italics supplied. The opinion published in the Baltimore Daily Record, June 12, 1939, is not accurate.

<sup>7</sup> The Maryland Act is based upon the status of employer-employee in Maryland, not upon contract between them. *Solvuca v. Ryan & Reilly Co.*, 131 Md. 265, 101 A. 710 (1917); see *Victory Sparkler Co. v. Francks*, 147 Md. 368, 128 A. 635, 44 A. L. R. 363 (1925). The Title to the Compensation Act explicitly applies it to "workmen engaged in extra-hazardous employments *in this State*" (italics supplied), and though the Title is not a part of the body of the Act it can be accepted to make clear a legislative intent. *Victory Sparkler Co. v. Francks*, *supra*, 147 Md. 368, 373-374. Section 14 of the Act in making the liability of the employer exclusive, Section 65 in preventing employers and employees from contracting away the benefits of the Act, and Section 80 (2) and (3) in defining "employer" and "employee", make the status relation even firmer. Taken together with the Title and with Section 19 (which, in arranging for classification of industries for premium purposes, reads in part: "the pay of the employe partly within and partly without the State shall be deemed to be such proportion of the total pay of such employe as his services within the State bears to his services outside the State")—there is exhibited the legislative intent that the Act reach workmen from other states, injured in this state, who are regularly and frequently employed in extra-hazardous work for a Maryland employer within this state. This has been stated, in fact, in 6 Ops. Atty. Gen. 443 (1921). See also RESTATEMENT, CONFLICT OF LAWS, Sec. 399.

place of contract) of a Maryland employer injured while "engaged in extra-hazardous employments in this State", a literal reading of the Outside Salesman Statute runs counter to the basis of the legislation.

Third, it is unreasonable to say that the Legislature, which never before was concerned with the citizenship or residence or place of contract of employees otherwise falling under the Act, suddenly decided to impose such a qualification upon outside salesmen injured in this state. It is reasonable to say that the qualification applies only to salesmen injured outside Maryland. The next point clarifies this.

Fourth, the purpose and history of the Outside Salesman Statute show that the "citizen or resident" clause was directed not at the case of injuries within the state but at an extra-territorial application of the Maryland Act. The "citizen or resident" clause was not intended as a limitation upon outside salesmen but as an extension of coverage to them; *i. e.*, even though injured beyond Maryland, outside salesmen are covered by the Compensation Act provided they are citizens or residents of Maryland working under a contract made in Maryland; if injured within Maryland, the extra-territorial extension of coverage—accomplished through the "citizen or resident" clause—does not apply.<sup>8</sup> This, too, is clarified by the next point.

Fifth, if coverage under the Workmen's Compensation Act be denied to the non-resident in the case at hand, who was injured in Maryland, a discrimination is made in favor of citizens or residents without a proper basis. The "citi-

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<sup>8</sup> The purpose of the statute is shown most clearly by the Original Bill: "An Act to add a new paragraph to Section 32 of Article 101 . . . providing that traveling salesmen, city salesmen and sales managers shall be included within the provisions of said Article." Md. House Journal (1924) 193. Unfortunately, the Assembly debates are not recorded, and the newspapers of the day do not seem to have paid much attention to the statute. From the words "traveling salesmen", however, the inference is warranted that the statute aimed at three things: first, at placing outside salesmen within the extra-hazardous employment category; second, since outside salesmen are known to be travelers, at an extra-territorial application of the coverage; third, coverage extra-territorially only when the citizen or resident condition was met. Whence, then, comes the requirement that in the case of injuries within Maryland the salesman must be a citizen or resident? The requirement creeps in only through reading the statute with an eye to language—words—not content.

zen or resident" clause was necessary to achieve jurisdiction extra-territorially, since in the case of employees injured beyond Maryland this state would have no power over them unless they were citizens or residents of Maryland working under a contract made in Maryland. But equally with respect to citizens or residents injured beyond Maryland as to non-citizens or non-residents injured in Maryland, this state has jurisdiction. Therefore to argue that because the Legislature imposed the "citizen or resident" condition in order to achieve extra-territoriality, the condition applies where no extra-territoriality is involved—as in the case at hand—is not only to invert the statute and obfuscate the salutary effect sought, but also to cast doubt upon its constitutionality—for the statute as thus applied discriminates needlessly between residents and non-residents.

These five points were treated in Appellant's Brief and argued to the court. The State Accident Fund took the position that the Legislature had the power to limit the classes of persons entitled to the benefit of the Compensation Act<sup>9</sup> and so could exclude non-resident outside salesmen; that the decision in *Liggett & Meyers Tobacco Company v. Goslin*<sup>10</sup> covered the case at bar; that the decision there also settled the constitutional questions.

The Court of Appeals, seeking full enlightenment, ordered a reargument. These were the queries of the Court:

"1. Is the right to compensation given a citizen or resident salesman for injury occurring within the state, a privilege or immunity secured to a salesman citizen of another state by Art. IV, sec. 2, of the United States Constitution?

"2. If it is, what is the effect of that protection in the present case? On this consider the opinion in *Quong Ham Wah v. Industrial Accident Commission*,

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<sup>9</sup> Citing *Liggett & Meyers Tobacco Co. v. Goslin*, 163 Md. 74, 160 A. 804 (1932); *Middleton v. Texas Co.*, 249 U. S. 152, 39 S. Ct. 227, 63 L. Ed. 527 (1919); SCHNEIDER, WORKMEN'S COMPENSATION, Sec. 118; RESTATEMENT, CONFLICT OF LAWS, 485, et seq.

<sup>10</sup> 163 Md. 74, 160 A. 804 (1932).

184 Cal. 26, 12 A. L. R. 1190, certiorari denied,<sup>11</sup> 255 U. S. 445, in connection with any other relevant cases counsel may find.

"3. Is it a privilege or immunity protected under the 14th Amendment? If so, what effect has that amendment on the present case?

"4. Has the requirement of equal protection of the laws in the 14th Amendment any effect on the present case? If so, what?"

At reargument, submitted on briefs, the State Accident Fund raised the point that because it was the employer who appealed—not the employee—the appeal ought to be dismissed. This the Court chose to do; saying rather questionably: "The employee is the only one adversely affected; but the employer cannot appeal for him."<sup>12</sup>

With this, the case at hand is presented. The two meaty issues raised by it are the question of coverage under the Compensation Act and the constitutional queries.

## I

The *Goslin* case<sup>13</sup> was the first decision on the Outside Salesman Statute. A citizen and resident of Maryland contracted, in Delaware, to work for a New York corporation in the territory of Delaware and Maryland. He was injured in Delaware and compensation was denied under the Maryland Act.

The effect of the statute, observed Judge Offutt speaking for the Court, is to say to an employee: "If you live

<sup>11</sup> Certiorari was not denied, but granted, an opinion was written, and the cause was dismissed for want of jurisdiction.

<sup>12</sup> 13 A. (2d) 340, 341 (Md. 1940). This seems rather questionable because the employer is as affected by the decision as the employee; workmen's compensation acts also protect employers. There is a respectable school of thought maintaining that employers, hard hit by juries, sought compensation acts to make definite their exposure before juries to an almost unlimited liability. In addition, Md. Code (1939) Art. 101, Sec. 70, permits any "employer, employe, beneficiary or person feeling aggrieved by any decision of the Commission affecting his interests under this Article" to appeal therefrom. Said Stockbridge, J., in *Brenner v. Brenner*, 127 Md. 189 (1915): "The persons concerned, and with whom the Act had primarily to do, were the employer and employee. . . ."

<sup>13</sup> The only other case on the statute is *Boteler v. Gardiner-Buick Co.*, 164 Md. 478, 165 A. 611 (1933).



in this state or are a citizen thereof, and are employed under a contract made in this state by an employer doing business therein, and in the course of your employment you are injured beyond the state, you are entitled to compensation, but if you do not live in this state or are not a citizen thereof, then under like conditions you are not entitled to compensation under this act."<sup>14</sup>

The Court, to put it shortly, read into the Statute a requirement that the contract of employment be made in Maryland. Such a construction was necessary, Judge Offutt explained, because otherwise "an employer in any other state who kept a place of business of any kind in this state could be subjected to the provisions of the act even though the contract of employment was not made in this state, the employment was not to be performed in this state, and the accident did not occur therein."<sup>15</sup> Concretely, for example, a British corporation doing business in Maryland and all over the world, employing in London a Maryland citizen to work in India, who was injured in India, might be subject to the Maryland Act unless there is a requirement that the contract of employment be made in Maryland. This possibility, well elaborated in Appellant's Brief in the *Goslin* case, found agreement with the Court. "No such illogical and impossible purpose could have been intended," runs the opinion, "first, because the State would have been powerless to enforce any such provisions, and, again, because such a result is foreign to the manifest purpose and spirit of the legislation."<sup>16</sup>

To this there can be no cavil. It is general and sound law aptly put by the Restatement of Conflicts of Laws:

"No recovery can be had under the Workmen's Compensation Act of a state if neither the harm occurred nor the contract of employment was made in the state."<sup>17</sup>

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<sup>14</sup> 163 Md. 74, 83, 160 A. 804 (1932).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> Sec. 400.

The *Goslin* case was advanced by the State Accident Fund in the case at hand as foreclosing any question of the meaning and application of the Outside Salesman Statute. It was argued that under the *Goslin* decision the contract of employment must be made in Maryland. This contention, it is suggested, entirely missed the reality that the *Goslin* case dealt with one side of an octagonal problem. The importance of this discussion to a sound development of our law on workmen's compensation lies in recognizing the *Goslin* case as one, and the case at hand as another facet of eight different situations. In each, the legally operative facts require separate reasoning. A mechanical compression of the various situations leads to disaster.

1. The outside salesman is *a resident of Maryland, injured in Maryland*, while working under a contract made in Maryland. Here is the plain instance of coverage. The salesman meets, without question, the conditions of the Statute and of the *Goslin* case.

2. The salesman is *a non-resident, injured beyond Maryland*, working under a contract made outside of Maryland. Here, again conclusion and reason are simple; the salesman is not entitled to compensation.

3. The salesman is *a resident, injured beyond Maryland*, working under a contract made in Maryland. This presents the situation that the Statute, relying just on bare language, was aimed at; and the consilience from the opinion in the *Goslin* case is that compensation must be granted.

4. The salesman is *a resident, injured beyond Maryland*, working under a contract made outside Maryland. These are the operative facts of the *Goslin* case; the salesman is not to receive compensation.

5. The salesman is *a resident, injured in Maryland*, working under a contract made outside Maryland. The conclusion, it is suggested, should be that the salesman is entitled to compensation. The Statute itself has no *locus contractus* requirement; the *Goslin* decision made necessary a Maryland contract only because otherwise the Maryland courts would have no jurisdiction and would be cov-

ering salesmen all over the world who simply happened to be Maryland residents. In this fifth situation, however, it is easy to see that neither of those reasons have force. Moreover, the basic policy of the Compensation Act is that employees injured in this state should be covered; and, as previously opined, the "citizen or resident" requirement was imposed in order to achieve extra-territoriality; and where no extra-territoriality is involved—as in the situation where the injury occurs in Maryland—the requirement should not apply.<sup>18</sup>

6. The salesman is a *non-resident, injured in Maryland, working under a contract made in Maryland*. Compensation should be granted, it is submitted, for the same reasons.

7. The salesman is a *non-resident, injured in Maryland, working under a contract made outside Maryland*. These are the facts of the case at hand. The two preceding factual set-ups and the reasons there controlling should direct the conclusion. The salesman ought to receive compensation.

8. The salesman is a *non-resident, injured beyond Maryland, working under a Maryland contract*. The Statute and the *Goslin* case, read together, require, in the case of an extra-territorial injury, that the salesman be a resident working under a Maryland contract. Here both conditions are not satisfied; the salesman is a non-resident. Hence he is not entitled to compensation.

This excursion into the possibilities<sup>18a</sup> may not sit well with hard-headed lawyers who need the authority of adjudicated cases to be convinced of anything. But on what thread other than such reasoning can these eight situations be strung? An attempt to apply the test of where the contract of employment was made, using the

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<sup>18</sup> *Supra* circa n. 7.

<sup>18a</sup> There may be the possibility of a fourth variable in the situations which give rise to the eight different setups, namely, whether all or merely part of the man's employment is in a single state. Thus, in situations 2, 4 and 5, of what effect would be the fact that the employee's *main* or *predominant* work was in Maryland? Certainly that fact tugs hard at the equities in those situations. This factor is not considered by the text of this article because there is up to the present no recognition of it in the Maryland cases. Quære as to the effect of Md. Code (1939) Art. 101, Sec. 80, Par. (3), last sentence.

*Goslin* case as authority, breaks down quickly. The touchstone that works is that where the injury occurs beyond Maryland the salesman must be a citizen or resident employed under a contract made in Maryland; where the injury occurs in Maryland, residence and place of contract are immaterial.

In addition to the logic behind this touchstone and to the pragmatic use of it, any other construction contravenes the privileges and immunities clause in the Federal Constitution.

## II

In the *Goslin* case the employer, on appeal, argued that if the salesman there were to be covered under the Maryland Act just because he was a citizen or resident of Maryland, then the interstate privileges clause of the Constitution (the Comity Clause) would be violated since citizens of each state would not then be receiving the privileges and immunities of citizens in the several states.

The Court disposed of the argument by holding that the Outside Salesman Statute took away no privileges but rather extended privileges<sup>19</sup>—the benefits of the Workmen's Compensation Act—to all persons over whom the state had jurisdiction: citizens or residents of Maryland. Hence there was no discrimination against non-residents.

“Since the act could have no extra-territorial effect, the State could not have extended it so as to include persons who were neither citizens or residents of the State, for over such persons it would have had no jurisdiction.”<sup>20</sup>

Because this state has jurisdiction over non-residents *injured within Maryland*, however, the question is whether the Statute (unless construed as previously suggested herein) discriminates in favor of citizens or residents of

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<sup>19</sup> Note that this supports the view taken, *supra* circa n. 8, that the citizen or resident clause was not intended as a limitation on outside salesmen but as an extension of coverage to them.

<sup>20</sup> 163 Md. 74, 80, 160 A. 804 (1932).

Maryland without a proper basis;<sup>21</sup> for with respect to citizens or residents, as with respect to non-residents injured in Maryland, the state has jurisdiction.

Thus the questions are precisely those four which the Court of Appeals wanted aired.

*Is the Right to Compensation Given a Citizen or Resident  
Salesman for Injury Occurring within the State a  
Privilege or Immunity secured to a Salesman  
Citizen of Another State by Article IV, Section  
2, of the United States Constitution?*

Says the Privileges and Immunities Clause: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

These privileges and immunities are far different from those of the "citizens of the United States" which a state, by the Fourteenth Amendment, is forbidden to abridge. The phrase "privileges and immunities" is the same in both Article IV and the Fourteenth Amendment but the particular privileges and immunities intended are radically different. "In the one case it is the privileges and immunities of citizens in the several states; in the other, the privileges and immunities of citizens of the United States."<sup>22</sup>

This important distinction, as will appear later, points the privileges and immunities in the Fourteenth Amendment as those arising out of the nature and essential character of the Federal Government, not of state governments.<sup>23</sup> It is, of course, the privileges and immunities of Article IV that are the concern here.

Of the Interstate Privileges Clause, Hamilton wrote: "It may be esteemed the basis of the Union."<sup>24</sup> Its purpose was to make the citizens of the United States one people. The language was taken from the Articles of Confederation

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<sup>21</sup> A non-resident is not entitled to every privilege of a resident; discriminations founded upon a reasonable basis are unobjectionable. See *Canadian Northern Ry. Co. v. Eggen*, 252 U. S. 553, 64 L. Ed. 713, 40 S. Ct. 402 (1920). This will be discussed further herein.

<sup>22</sup> Meyers, *The Privileges and Immunities of Citizens in the Several States* (1903) 1 Mich. L. Rev. 286, 286.

<sup>23</sup> This will be discussed further herein.

<sup>24</sup> The Federalist, No. 80.

and was intended, in the words of those Articles, the better "to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union."<sup>25</sup>

One of the earliest cases construing the clause, a Maryland decision, indicated that it was the personal rights of citizens—not their public rights—which came within the privileges and immunities protection.<sup>26</sup> Robert Morris of Pennsylvania owned lands in Maryland which were seized under our non-resident attachment statute. In dismissing Morris' plea that his privileges and immunities had been violated, Judge Chase said:

"The Court are of opinion it means that the citizens of all the States shall have the peculiar advantage of acquiring and holding real as well as personal property, and that such property shall be protected and secured by the laws of the State, in the same manner as the property of the citizens of the State is protected. It means, such property shall not be liable to any taxes or burdens which the property of citizens is not subject to. It may also mean that as creditors, they shall be on the same footing with the State creditor, in payment of the debts of a deceased debtor. *It secures and protects personal rights.*"<sup>27</sup>

The first federal case, and therefore a very famous one, was *Corfield v. Coryell*.<sup>28</sup> Circuit Justice Bushrod Washington, upholding a New Jersey statute which forbade non-residents to gather oysters on any boat not wholly owned by a resident—the basis for the decision being that the privileges and immunities clause did not include the right to enjoy public property, fisheries, held in common for the benefit of the people of the state—unflinchingly enumerated a number of privileges and immunities.

"We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental. . . . What these funda-

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<sup>25</sup> Art. IV, Articles of Confederation.

<sup>26</sup> *Campbell v. Morris*, 3 H. & McH. 535 (Md. 1797).

<sup>27</sup> *Id.*, 554. Italics supplied.

<sup>28</sup> Fed. Case 3230, 6 Fed. Cas. 546 (1823).

mental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state. . . . These, and many others which might be mentioned, are, strictly speaking, privileges and immunities. . . ."<sup>29</sup>

Another of the early cases held unconstitutional a Maryland statute which taxed residents operating under a trader's license from \$150 down, depending upon the value of their stock, but imposed a flat fee of \$300 on non-residents. Mr. Justice Clifford, aware of the enormity of enumerating privileges and immunities, shied the task:

"Attempt will not be made to define the words 'privileges and immunities', or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakeably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the courts of the State; and to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens."<sup>30</sup>

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<sup>29</sup> *Id.*, 551-552.

<sup>30</sup> *Ward v. Maryland*, 79 U. S. 418, 430, 20 L. Ed. 449 (1870).

In the same year the famed *Slaughterhouse* cases evoked this explanation of the Interstate Privileges Clause:

"The description, when taken to include others not named, but which are of the same general character, embraces nearly every civil right for the establishment and protection of which organized government is instituted. They are, in the language of Judge Washington, those rights which are fundamental."<sup>31</sup>

*Blake v. McClung* used the accumulated reason of the decisions. A Tennessee statute provided that, on the distribution of the assets of an insolvent foreign corporation doing business within the state, residents were to be preferred over non-residents. The statute was held violative of the privileges and immunities clause; Mr. Justice Harlan, after a review of the cases, saying:

"The foundation upon which the above cases rest cannot however stand, if it be adjudged to be in the power of one State, when establishing regulations for the conduct of private business of a particular kind, to give its own citizens essential privileges connected with that business which it denies to citizens of other States. By the statute in question the British company was to be deemed and taken to be a corporation of Tennessee, with authority to carry on its business in that State. It was the right of citizens of Tennessee to deal with it. . . . And it was equally the right of citizens of other States to deal with that corporation.

. . .

"No one would question the right of the individual plaintiffs in error, although not residents of Tennessee, to sell their goods to that corporation upon such terms in respect of payment as might be agreed upon, and to ship them to the corporation at its place of business in that State. But the enjoyment of these rights is materially obstructed by the statute in question; for that statute, by its necessary operation, excludes citizens of other States from transacting business with that corporation upon terms of equality with citizens of Tennessee. By force of the statute alone, citizens of other States, if they contracted at all with the Brit-

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<sup>31</sup> *Slaughterhouse Cases*, 83 U. S. 36, 76 (1873).



ish corporation, must have done so subject to the onerous condition that if the corporation became insolvent its assets in Tennessee should first be applied to meet its obligations to residents of that State. . . . But, clearly, the State could not in that mode secure exclusive privileges to its own citizens in matters of business. If a State should attempt . . . to give priority to the claims of such individual creditors as were citizens of that State over the claims of individual creditors, citizens of other States, such legislation would be repugnant to the Constitution upon the ground that it withheld from citizens of other States as such, and because they were such, privileges granted to citizens of the State enacting it."<sup>32</sup>

The two latest expressions of opinion from the Supreme Court<sup>33</sup> repeat, with elaborations, the reasoning of these cases and crack to pieces the older view that a citizen of one state has fundamental privileges and immunities inhering in him by mere virtue of his citizenship. It is not that a citizen of one state has fundamental rights under the privileges and immunities clause which he carries about his person. It is rather, as Dean Howell observed in his brochure on the subject, written some twenty-two years ago and still sound today, that "in any given State, every citizen of every other State shall have the same privileges and immunities which the citizens of that State possess.

. . . "<sup>34</sup>

From this review it may be suggested that the privileges and immunities in Article IV relate to those substantial substantive legal relations between a citizen and the states, which, taken together, constitute the people of the United States one nation; since, no matter where in the length and breadth of this country a citizen travel or take up residence, he is assured of protection by the government, access to the courts, the enjoyment of his liberty, the possession of his property, and the opportunity to engage, on

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<sup>32</sup> 172 U. S. 239, 252-3, 43 L. Ed. 432, 19 S. Ct. 165 (1898).

<sup>33</sup> *Hague v. C. I. O.*, 307 U. S. 496, 511, 83 L. Ed. 1423, 59 S. Ct. 954 (1939); *Madden v. Kentucky*, 309 U. S. 83, 90, 84 L. Ed. 590, 60 S. Ct. 406 (1940).

<sup>34</sup> HOWELL, *THE PRIVILEGES AND IMMUNITIES OF STATE CITIZENSHIP* (1918) 20.

terms of equality with his fellows who are not in a favored class, in trade, agriculture, business and professional pursuits. With these, his rights to marry, to control the descent of the property which he may acquire, to guide his children and his family on equal terms with the citizens of the state to which he moves—it may be in order the better to follow his fortunes—are the basic privileges and immunities of citizens of the several states.<sup>35</sup>

Rather glittering generalities with a touch of poesy describes that formulation of the privileges and immunities; for in almost any particular case there may indeed remain a question whether the legal relation is one of those basic private rights. In the case at hand, however, it would seem that the relation is clearly within the Comity Clause.

The protection afforded by workmen's compensation acts is today an integral part of the pursuit of a trade. Whether workmen's compensation, from a technical legal view, is a statutory substitute for the common law master-servant relation, it certainly is from a practical one. As such, it should be considered a privilege and immunity of the citizens of a state. The *Quong Ham Wah* case so held.<sup>36</sup>

There the employer had hired, in California, one Owe Ming under an agreement that the employee was to work in Alaska. Owe Ming, injured in Alaska, on his return petitioned for compensation in California. The California statute, aiming at the same thing as the Maryland statute but more clearly, read:

"The commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state, and any such employee or his dependents shall be entitled to the compensation or death benefits provided by this Act."<sup>37</sup>

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<sup>35</sup> See BLACK, CONSTITUTIONAL LAW (3rd Ed. 1910) 640; WILLOUGHBY, CONSTITUTIONAL LAW (2nd Ed. 1929) Sec. 137.

<sup>36</sup> *Quong Ham Wah v. Industrial Accident Commission*, 184 Calif. 26, 192 Pac. 1021; 12 A. L. R. 1190 (1920), dismissed for want of jurisdiction, 255 U. S. 445, 65 L. Ed. 723, 41 S. Ct. 373 (1921).

<sup>37</sup> Calif. Laws of 1917, Ch. 586, Sec. 58. Now, altered somewhat in wording, it is Sec. 5305 of Calif. Labor Code (Deering).

Said the Court:

"When, however, the legislature attempts to provide that a substantial privilege shall be incident to certain contracts of employment when entered into in this state by citizens of this state and that that privilege shall not be incident to identical contracts of employment when entered into in this state by citizens of other states of our Union, the enactment is clearly in contravention of section 2 of Article IV of the federal constitution. . . . It is true that many procedural discriminations between citizens and non-citizens have been upheld, but the rule applied in such situations has no application where a substantial substantive right is granted to citizens and under like circumstances is denied to citizens of other states. The statute here in question provides for the creation within this state of a right to accident insurance as an incident to certain contracts of employment in favor of citizens and opens the door of its courts and commissions to citizens to enable them to enforce that right. This right is not accorded to citizens of other states. A privilege and protection of the laws of a substantial nature is thereby accorded to citizens of this state and denied to citizens of other states. This is forbidden by the federal constitution."<sup>38</sup>

In answer to the contention that the discrimination was reasonable because the statute was to prevent citizens of the state and their families from becoming burdens, the court observed that this was a very excellent reason for requiring compensation for citizens but was no reason at all for denying the same right to citizens of other states: "The fact that considerations of public policy do not affirmatively require the extension of the benefits in question to citizens of sister states as strongly as they require their extension to citizens of this state furnishes absolutely no sound reason for the exclusion of the former and affords no reasonable basis for the discrimination."<sup>39</sup>

There may be a question on the soundness of this holding that there was no reasonable ground for the discrim-

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<sup>38</sup> 184 Calif. 26, 37.

<sup>39</sup> *Id.* 38.

ination between residents and non-residents—certainly, however, the decision that the right to workmen's compensation fell within the Interstate Privileges Clause is proper. An annotator is critical of the case, though explaining that there is little direct authority on the point of whether the discrimination is reasonable or not.<sup>40</sup> Our Court of Appeals in the *Goslin* case stated it was unable to accept the reasoning on the discrimination issue.<sup>41</sup> The *Goslin* holding, however, did not touch on the question of whether the right to workmen's compensation was an interstate privilege. A litigation on all fours with the operative facts of the *Goslin* case reached the conclusion of that case but did so by relying on the privileges and immunities clause, by placing workmen's compensation within the privileges and immunities of citizens of the several states.

There, the employer, an Indiana corporation, also did business in Oklahoma and Arkansas. The employee, a resident of Indiana, contracted in Arkansas to work there for the corporation and was killed there. Claim by the employee's dependents under the Indiana law was refused. "To give a controlling influence to the fact that the employee was a resident of this state," said the Court, "temporarily living in another state, so as to allow compensation in this case, when compensation would have to be denied if such employee had been a resident of Illinois, would be granting rights and privileges to a citizen of this state

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<sup>40</sup> 12 A. L. R. 1207. The annotator cites *Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 156 Pac. 491, L. R. A. 1917-E 390 (1916), a case which held the compensation act not unconstitutional because it required payments to non-resident dependents of a deceased employee. The opinion read in part: "If it may reasonably be thought that the best interests of the state, of the employers of labor, and of those employed, as well as of the public generally, are promoted by imposing upon the industry or the public the burden of industrial accidents—and some such theory lies at the bottom of all workmen's compensation statutes . . . the residence and citizenship of the injured workman, or (if he shall have met death) of his dependents, are factors entirely foreign to the discussion. The legislature has determined that the employment of labor in given pursuits entails upon the employer certain responsibilities toward the persons performing the labor and those dependent upon them. There is no constitutional or rational ground for limiting the benefits of this legislative scheme to citizens or residents of this state. If the employment was such as to fall within the state's lawmaking jurisdiction, the legislature certainly had the power to pass laws operating uniformly upon all persons affected by such employment."

<sup>41</sup> 163 Md. 74, 81, 160 A. 804 (1932).

which would not, under the same facts, be granted citizens of other states. Suppose that when Cubbison [the employee] was employed to go to Arkansas and work for appellant, another person residing in Illinois had also been employed under like circumstances; that both men went to Arkansas and both were injured in the same accident; would not a law granting compensation to Cubbison and denying it to the other be in conflict with the provisions of the Constitution of the United States which prohibits the granting of rights and privileges to citizens of one state that, under like circumstances, are not granted to citizens of other states?"<sup>42</sup>

These cases hold the right to compensation a privilege under Article IV—the disagreement centers only around the question of whether there is a reasonable basis for the discrimination between residents and non-residents. The disagreement is of no concern here. It is the establishment of the privilege that is the question here—not the further question of extension of the privilege.<sup>43</sup>

So in the case at hand the fact that non-residents injured in Maryland are covered by the Compensation Act; that—assuming the Outside Salesman Statute to be meant to apply literally as it reads—only outside salesmen, of the many types of employees covered by the Act must be citizens or residents in order to receive compensation; that an outside salesman who is a citizen or resident of Maryland, working under a contract made outside Maryland, injured in Maryland, is given the benefit of the Act and the same salesman under the same circumstances is denied benefits if he is not a citizen or resident; these facts seem to establish, whether the question of discrimination in the *Quong Ham Wah* case be considered sound or unsound, the withholding of a privilege from non-residents as such,

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<sup>42</sup> *Bement Oil Corp. v. Cubbison*, 84 Ind. App. 22, 25, 149 N. E. 919 (1925).

<sup>43</sup> These cases deal with aspects of the problem: *Gregutis v. Waclark Wire Works Co.*, 86 N. J. L. 610, 92 A. 354 (1914); *Vietti v. Fuel Co.*, 109 Kan. 179, 197 P. 881 (1921); *Maryland Casualty Co. v. Chamos*, 203 Ky. 820, 263 S. W. 370 (1924). For apt analogies in other fields see *Conner v. Elliott*, 18 How. 591, 15 L. Ed. 497 (1856); *Chemung Canal Bank v. Lowery*, 93 U. S. 72, 23 L. Ed. 806 (1876); *Chambers v. B. & O. R. Co.*, 207 U. S. 142, 52 L. Ed. 143, 28 S. Ct. 34 (1907).

and because they are such, that is given to residents and even to non-residents who are not engaged as outside salesmen.

If that be so, does the Outside Salesman Statute become void for conflicting with the privilege and immunities clause?

*What Is the Effect of the Privileges and Immunities Clause in the Present Case?*

The *Quong Ham Wah* case took the position that although there was a discrimination between residents and non-residents violative of the privileges and immunities clause, the effect of that clause was not to render the compensation statute void but to allow it to stand "and automatically, and without regard to the intent of the state legislature"<sup>44</sup> to extend the benefits to such non-residents as are citizens of sister states.

The reasoning, based upon an earlier California case dealing with estate taxes,<sup>45</sup> went along the line that the privileges and immunities clause is not prohibitory, penal, or restrictive in language; that the clause does not forbid certain state legislation but rather assures the citizens of each state of the privileges and immunities a state declares for its own citizens; that the clause, therefore, *ex proprio vigore*, becomes an express part of every state statute; that, in consequence, the courts do not strike down a statute which does not give equal privileges but instead extend the statute so as to place all citizens upon an equal footing.

"Viewed in this light," said the Court, "it is clear that when a state statute imposes a burden on a non-citizen which is not imposed on the citizen of the state, the non-citizen may have relief from the burden thus imposed by invoking the provision of the federal constitution for the nullification of the discriminatory legislation. But, when a privilege is granted to a citizen and withheld from a non-citizen, the latter finds relief in the provision of the federal

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<sup>44</sup> 184 Calif. 26, 39, 192 Pac. 1021, 12 A. L. R. 1190 (1920).

<sup>45</sup> Estate of Johnson, 139 Calif. 532, 73 Pac. 424, 96 Am. St. Rep. 161 (1903).

constitution which, by operation of law, so to speak, extends the privilege to him."<sup>46</sup>

This doctrine, which seems so novel, which seems to presage some unusual wrinkle in constitutional construction, has support in the decisions.

On certiorari, the *Quong Ham Wah* case was dismissed for want of jurisdiction, the Supreme Court stating that it was without authority to review and revise the construction of a state statute by the court of last resort of that state. Chief Justice White wrote:

"True it is elaborately argued that the court below erred in supposing that the statute was susceptible of the construction which it affixed to it and that, instead of adopting that construction, its duty was to hold the statute void for repugnancy to the Constitution on the grounds which were urged. But this in a different form of statement but disputes the correctness of the construction affixed by the court below to that state statute and assumes that the construction is here susceptible of being disregarded upon the theory of the existence of the discrimination contended for when, if the meaning affixed to the statute by the court below be accepted, every basis for such contended discrimination disappears. It follows that the argument but accentuates the frivolous character of the federal question relied on."<sup>47</sup>

That the Supreme Court thus permitted this unique view of the privileges and immunities clause to pass—and in so doing gave notice to the state courts of last resort that they might follow suit—is not especially astonishing after the language in *Blake v. McClung* and the *Slaughterhouse* cases is considered. In the former case, though the Tennessee statute (which preferred residents over non-residents on the distribution of the assets of an insolvent foreign corporation) was held repugnant to the Constitution, it was not held void; the privileges and immunities clause was read into the statute, *ex proprio vigore*, and the inequality levelled. In the latter, the Supreme Court first

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<sup>46</sup> 184 Calif. 26, 41, 192 Pac. 1021, 12 A. L. R. 1190 (1920).

<sup>47</sup> 255 U. S. 445, 449, 65 L. Ed. 729, 41 S. Ct. 381 (1921).

enunciated the doctrine that the Comity Clause did not profess to control the action of state governments but instead declared that whatever rights the state granted to its own citizens neither more nor less was to be the measure of the rights of citizens of other states within the jurisdiction.

"The constitutional provision [in Article IV] . . . did not create those rights which it called privileges and immunities of citizens of the States. It threw around them in that clause no security for the citizens of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens."

"Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction."<sup>48</sup>

These cases seem the only direct authority on the point. From the holdings of other cases, however, it follows that in effect the courts do extend privileges and immunities to citizens of other states when they strike down limitations.<sup>49</sup> And one case has woven a variation of the doctrine: that the privileges and immunities are to be extended, *ex proprio vigore*, save where the legislature has expressly limited the statute to residents—it must be an express limitation not just a statement of application—in which event the statute must be voided.<sup>50</sup>

That case brought up a war-time statute providing exemptions for Wisconsin residents in military service from all civil process and proceedings until their discharge from service. A Wisconsin resident in military service pleaded the statute as defense to a civil bastardy action. Judge Rosenberry, speaking for the Court, adjudged the

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<sup>48</sup> 83 U. S. 36, 77, 21 L. Ed. 394 (1873).

<sup>49</sup> See the *Quong Ham Wah* case, 184 Calif. 26, 40 *et seq.*, 192 Pac. 1021, 12 A. L. R. 1190 (1920).

<sup>50</sup> *Konkel v. State*, 168 Wis. 335, 170 N. W. 715 (1919).



statute void for conflicting with the federal soldiers' and sailors' relief acts, but, in the course of his opinion, said:

"The privilege of the act not being denied to the citizens of other states by the express terms of the act, it must be held to apply to the citizens of other states of the Union. The citizens of other states are entitled under the federal constitution to enjoy the same privileges and immunities as are conferred upon citizens of this state. Therefore, all the privileges and immunities conferred by the act upon the citizens of this state are conferred upon the citizens of other states, in the absence of language expressly limiting the act to citizens of this state. *Blake v. McClung*, 172 U. S. 239, 19 Sup. Ct. 165; *Estate of Johnson*, 139 Cal. 532, 538, 73 Pac. 424; *Slaughter-House Cases*, 16 Wall. 36, 77."<sup>51</sup>

In addition to the force of these decisions, there may be added the logical consequences of considering privileges and immunities, not as fundamental attributes of state citizenship, but as a set of private rights based on the extension to citizens of one state who may be in another, the rights granted by the latter state to its own citizens. Says Dean Howell in making this distinction clear (a distinction now settled law, as has already been remarked herein):

"It is evident that there is nothing in common between this idea of a number of defined rights which are absolutely secured to citizens of each State in every other State, and the idea that the most the citizens of one State can claim in another is the same treatment as that State affords its own citizens, except with regard to the exercise of public rights, and in so far as the safety and the welfare of the citizens of the State demand police legislation to the contrary."<sup>51a</sup>

The consequence is plain: ". . . if these rights are conceived of as fundamental, they are absolutely guaranteed, while according to the correct view, they are secured only

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<sup>51</sup> *Id.* 168 Wisc. 335, 338.

<sup>51a</sup> HOWELL, THE PRIVILEGES AND IMMUNITIES OF STATE CITIZENSHIP (1918) 106-107.

in so far as they are granted by each State to its own citizens."<sup>51b</sup>

Hence the conclusion that our Outside Salesman Statute need not be held void for impairing a guaranteed right, but is rather to be held to be an attempted limitation which the constitution itself extends.

*The Effect of the Interstate Privileges Clause  
in the Fourteenth Amendment.*

It has already been observed that this clause in the Fourteenth Amendment refers only to those privileges and immunities which arise out of the nature and essential character of the federal government.<sup>52</sup> The text-writers and cases agree.<sup>53</sup>

In 1935, however, *Colgate v. Harvey*<sup>54</sup> attempted to expand the privileges and immunities of national citizenship by including thereunder the right to buy, sell, contract and negotiate—legal relations which had previously been regarded as attributes of state citizenship only. The expansion, concretely, held that since Vermont assessed a 5% tax on income from money loaned outside the state and placed no tax on income derived from a loan within the state, there was a discrimination abridging the privileges of a citizen of the United States. The decision was strongly protested, for prior to *Colgate v. Harvey* the privileges of national citizenship had been held to embrace only purely federal relations: the right to hold national office; to participate in elections therefor; to petition the Congress; importation privileges; and so on.<sup>55</sup>

With *Madden v. Kentucky*<sup>56</sup> the expansion was punctured, expressly and firmly. The question was the constitutionality of a Kentucky statute which imposed on Ken-

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<sup>51b</sup> *Id.* 107.

<sup>52</sup> *Supra* n. 22.

<sup>53</sup> BLACK, CONSTITUTIONAL LAW (3rd Ed. 1910) 640; WILLOUGHBY, CONSTITUTIONAL LAW (2nd Ed. 1929) Sec. 137; *Duncan v. Missouri*, 152 U. S. 377, 382, 38 L. Ed. 485, 14 S. Ct. 570 (1893); *Maxwell v. Bugbee*, 250 U. S. 525, 537-538, 63 L. Ed. 1124, 40 S. Ct. 2 (1919).

<sup>54</sup> 296 U. S. 404, 80 L. Ed. 299, 56 S. Ct. 252 (1935).

<sup>55</sup> See *supra* n. 53.

<sup>56</sup> 309 U. S. 83, 84 L. Ed. 406, 60 S. Ct. 406 (1940).

tucky citizens a tax on bank deposits outside the state of .005% and on bank deposits within the state a tax of .001%. The statute was upheld. Mr. Justice Reed, speaking for the court, saying:

"There is no occasion to attempt again an exposition of the views of this Court as to the proper limitations of the privileges and immunities clause [in the Fourteenth Amendment]. There is a very recent discussion in *Hague v. C. I. O.* The appellant purports to accept as sound the position stated as the view of all the justices concurring in the *Hague* decision. This position is that the privileges and immunities clause [in the Fourteenth Amendment] protects all citizens against abridgement by states of rights of national citizenship as distinct from the fundamental or natural rights inherent in state citizenship. . . . In applying this constitutional principle this Court has determined that the right to operate an independent slaughterhouse, to sell wine on terms of equality with grape growers, and to operate businesses free of state regulation were not privileges and immunities protected by the Fourteenth Amendment. . . . We think it quite clear that the right to carry out an incident to a trade, business or calling, such as the deposit of money in banks, is not a privilege of national citizenship."<sup>57</sup>

The plain conclusion is that the particular privilege involved in the case at hand—workmen's compensation as an incident to a trade—is not within the interstate privileges clause of the Fourteenth Amendment.

*The Effect of the Equal Protection of the Laws Clause  
in the Fourteenth Amendment.*

On this there may be as considerable argument as there is adjudication. There is, on the one hand, the general formula of *Barbier v. Connolly*, a decision upholding a municipal ordinance regulating public laundries:

"The Fourteenth Amendment . . . undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of

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<sup>57</sup> *Id.* 309 U. S. 83, 90-92.

property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition. . . ."<sup>58</sup>

On the other hand, *Maxwell v. Bugbee* ruled that a state tax which applied to local property the rate which would be applicable to the entire estate were it all within the borders of the state was constitutional:

"Equal protection of the laws requires equal operation of the laws upon all persons in like circumstances. . . . In making classification, which has been uniformly held to be within the power of the State, inequalities necessarily arise, for some classes are reached, and others omitted, but this has never been held to render such statutes unconstitutional."<sup>59</sup>

A more specific test was enunciated in a decision dealing with a statute prescribing the width of bituminous coal mine entries. The test, said the Court, is whether "there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched."<sup>60</sup>

That test in the case at hand constrains a conclusion that the Outside Salesman Statute—if construed literally—runs afoul of the equal protection of the laws clause. Of course, to adopt that test without more ado would be superficial glibness. Where there are rational grounds for

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<sup>58</sup> *Barbier v. Connolly*, 113 U. S. 27, 31-2, 28 L. Ed. 923, 5 S. Ct. 357 (1885).

<sup>59</sup> *Maxwell v. Bugbee*, 250 U. S. 525, 541, 63 L. Ed. 1124, 40 S. Ct. 2 (1919).

<sup>60</sup> *Barrett v. Indiana*, 229 U. S. 26, 30, 57 L. Ed. 1050, 33 S. Ct. 692 (1913).

discriminations "persons or their properties may be grouped into classes to each of which specific legal rights or liabilities may be attached."<sup>61</sup> The tenor of the equal protection doctrine today revolves around that simple but broad statement. Classifications based on reasonable grounds, on differences which bear a "just and proper" relation to the classification are valid.<sup>62</sup> Really, however, there is no necessity to poke and pry further into this amorphous realm of constitutional interpretation. The purpose of this venture, that of unfolding the case at hand and tying its ramifications into the Maryland law, has been accomplished.

### CONCLUSION.

In this sort of analysis, conclusions are often dangerous. In the effort to produce a neatly trimmed and tied packet what has been only suggested may become flat statement.

With that in mind it can be nonetheless stated that the *Goslin* case, important as it is, must be recognized as dealing with but one of eight possible similar litigation-situations under the Outside Salesman Statute. The remaining seven stand on their own bottoms and require reasoning, not mechanical compression into the *Goslin* category. The reasoning that harmonizes all is that where the injury occurs beyond Maryland the salesman must be a citizen or resident employed under a contract made in Maryland if he is to receive compensation; where the injury occurs in Maryland, residence and place of contract are immaterial, are not legally operative facts. It can almost be stated that workmen's compensation, as an important part of the pursuit of a trade or business, falls within the privileges and immunities of the citizens of the several states.

Whether the operation of the Comity Clause on statutes conflicting with it is to extend, automatically and without regard to the intent of the statute, those privileges so as to level any inequality, is a hard nut to crack. In the case at hand it should be noted that these constitutional ques-

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<sup>61</sup> WILLOUGHBY, CONSTITUTIONAL LAW (2nd Ed. 1929) Sec. 1273.

<sup>62</sup> *Gulf Ry. Co. v. Ellis*, 165 U. S. 150, 165, 41 L. Ed. 666, 17 S. Ct. 255 (1897).

tions arise only after the main position has been disregarded; that if the statute be construed as offered herein these constitutional queries disappear.

The determination of that constitutional issue cannot be made on the legal level. The argument of the *Quong Ham Wah* case, allowed to pass through the Supreme Court, is as valid, legally, as any argument in opposition, legally.

What effect, practically, and what good—or bad—socially, would that doctrine have on our commercial and civil life is the proper resolution of the problem. This imports no nonsense, either transcendental or functional, into the law; where there are competing doctrines, that one should be accepted which demonstrates its worth.

On that, a study more exacting than this venture, which sought only to explain the issues, is needed.